

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RAYMOND RAPLEY,

Defendant-Appellee.

UNPUBLISHED

March 18, 2003

No. 238704

Wayne Circuit Court

LC No. 01-005831-01

Before: Cooper, P.J. and Murphy and Kelly, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of carjacking, MCL 750.529a, armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 760.227b. The trial court sentenced defendant to concurrent prison terms of 30 to 180 months for the carjacking and armed robbery convictions, to be served consecutive to a two-year term for the felony-firearm conviction. The prosecutor now appeals as of right, challenging defendant's armed robbery sentence. We vacate defendant's sentence for armed robbery and remand for resentencing.

At sentencing, defendant challenged the scoring of the sentencing guidelines, objecting to the score of ten points for prior record variable ("PRV") 7 (subsequent or concurrent felony convictions), MCL 777.57, for the armed robbery conviction.¹ The sentencing information report originally scored ten points for PRV 7 based on defendant's concurrent carjacking conviction. MCL 777.57(1)(b). Defendant maintained that, because PRV 7 was a *prior record* variable, his *concurrent* conviction for carjacking could not properly be considered a *prior* felony, see MCL 777.51(2) and MCL 777.52(2). Because the court agreed with defendant that it was inherently inconsistent to score a *concurrent* conviction under a *prior record* variable, it scored PRV 7 at zero points.

With ten points scored for PRV 7, defendant's minimum sentence range would have been fifty-one to eighty-five months. MCL 777.62. Without the ten points scored for PRV 7,

¹ Because the offense occurred after January 1, 1999, the statutory sentencing guidelines apply. MCL 769.34(2); *People v Greaux*, 461 Mich 339, 342 n 5; 604 NW2d 327 (2000).

defendant's minimum sentence range was instead twenty-seven to forty-five months. *Id.* The court sentenced defendant to 30 to 180 months in prison.

On appeal, plaintiff argues that the trial court erred in scoring PRV 7 at zero points based on the determination that defendant's concurrent conviction for carjacking could not be considered a prior record variable. We agree.

Because this issue involves a question of statutory interpretation, it is reviewed de novo. *People v Stone Transport, Inc*, 241 Mich App 49, 50; 613 NW2d 737 (2000). When interpreting a statute, our primary goal is to ascertain and give effect to the intent of the Legislature. *Id.* To discern the intent of the Legislature, this Court must first look to the specific language of the statute. *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). If the plain and ordinary meaning of the statutory language is clear, judicial construction is inappropriate. *Id.*

MCL 777.57(2)(a) plainly provides that, in scoring PRV 7, the court is to score "the appropriate point value if the offender was convicted of multiple felony counts." We disagree with defendant that this statute is rendered ambiguous when considered in conjunction with other statutory provisions.² We find nothing in the language of either MCL 777.21(1)(b) and (c), or MCL 777.42(2)(a)(ii), to bring into doubt the clear and unambiguous language of MCL 777.57, with regard to the scoring of concurrent convictions under PRV 7. Indeed, if we were to credit defendant's argument, MCL 777.57 would be rendered surplusage, in that no concurrent or subsequent conviction could ever be scored for purposes of PRV 7. Such a construction must be avoided. *People v Warren*, 462 Mich 415, 429 n 24; 615 NW2d 691 (2000). Because MCL 777.57 clearly provides that the court is to score all concurrent felony convictions for purposes of PRV 7, the trial court erred in scoring PRV 7 at zero points. Instead, PRV 7 should have been scored at ten points based defendant's concurrent carjacking conviction.

Because the scoring error reduced defendant's recommended minimum sentence range under the guidelines, and because defendant was sentenced below the range recommended by the properly scored guidelines, we remand for resentencing. On resentencing, the court shall either resentence defendant within the range recommended by the properly scored guidelines, or articulate substantial and compelling reasons for deviating from that range in the event of a departure.³

² Defendant cites to MCL 769.33; however, that statute has been repealed by 2002 PA 31, § 2, effective April 1, 2002.

³ The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2); *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001). The court may depart from the guidelines if it "has a substantial and compelling reason for that departure and states on the record the reasons for the departure." MCL 769.34(3); *People v Babcock (After Remand)*, 250 Mich App 463, 465; 648 NW2d 221 (2002).

Defendant's armed robbery sentence is vacated and the case is remanded for resentencing on that offense. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Kirsten Frank Kelly